

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
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US DISTRICT COURT E.D.N.Y.

★ AUG 29, 2013 ★

ORDER BROOKLYN OFFICE

17-cv-5724 (ENV) (RER)

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ASTORIA ENERGY II LLC,

Plaintiff,

-against-

HH VALVES LTD.,

Defendant.
----- x

VITALIANO, D.J.

Plaintiff Astoria Energy II LLC commenced this action on September 29, 2017, against HH Valves Ltd., among others, asserting strict product liability and negligence claims relating to a purportedly defective valve in use at its power plant. Dkt. 1. On November 28, 2017, counsel for HH Valves, admitted to practice law in the United Kingdom but, apparently, not in any state or federal court in this country, filed a letter broadly denying the claims asserted in the complaint. Dkt. 14. The letter was designated an "answer" on the docket. *Id.* On December 19, 2017, Astoria Energy requested a pre-motion conference in anticipation of a motion to compel HH Valves to file an amended answer, arguing that defendant's original answer failed to comport with the procedural and substantive requirements of Rules 8 and 10. Dkt. 17. After being served with a copy of the pre-motion conference request, counsel for HH Valves informed Astoria Energy by e-mail, dated March 8, 2018, that HH Valves would no longer "engage" with plaintiff on this matter. Dkt. 23-1. The Court denied plaintiff's pre-motion conference request but permitted the parties to proceed with briefing the motion to compel, which was filed, without any response from HH Valves, on May 4, 2018. Dkt. 27.

On July 13, 2018, Magistrate Judge Ramon E. Reyes, Jr. recommended that plaintiff's motion to strike what was deemed by the Clerk to be HH Valves's answer be granted and that

HH Valves be given 21 days' leave to do so. Dkt. 29. The Court adopted the recommendation on August 15, 2018. Dkt. 30. An amended answer was not forthcoming. As a result, with the original answer remaining in place during the leave period, Astoria Energy moved to strike it formally, Dkt. 32, which the Court granted on October 4, 2018.

The Clerk then entered a default against HH Valves on November 20, 2018, Dkt. 39, and Astoria Energy moved for a default judgment on March 27, 2019. Dkt. 40. The Court referred the motion to Judge Reyes for a Report & Recommendation ("R&R"). *See Order Referring Motion*, dated Mar. 27, 2019. Judge Reyes issued his R&R on August 2, 2019. Dkt. 41. The R&R recommends that the motion be denied and that plaintiff be given leave to file an amended complaint. Judge Reyes determined that the complaint, as currently pleaded, failed to sufficiently present factual allegations upon which HH Valves could be held liable on any theory of product liability or negligence.

Notice of time to object to the R&R was given. *See R&R at 8*. HH Valves did not file any objections,¹ and Astoria Energy, although respectfully disagreeing with Judge Reyes's conclusion, filed no formal objection. Dkt. 43.

Discussion

Where no party has objected to a magistrate judge's report and recommendation, clear error review applies. *See Dafeng Hengwei Textile Co. v. Aceco Indus. & Commercial Corp.*, 54 F. Supp. 3d 279, 283 (E.D.N.Y. 2014). Having carefully reviewed the R&R in accordance with this standard, the Court finds it to be correct, well-reasoned and free of any clear error. The Court, therefore, adopts the R&R, in its entirety, as the opinion of the Court.

¹ The record reflects that HH Valves was properly served with the R&R on August 8, 2019. Dkt. 42.

Conclusion

For the foregoing reasons, the R&R is adopted, in its entirety, as the opinion of the Court. Plaintiff's motion for default judgment is denied. Plaintiff is afforded 21 days' leave to file an amended complaint with the Court. Defendant is directed to answer the amended complaint no later than 21 days after its service and entry on the docket. Defendant is reminded that its answer must be served and filed by an attorney admitted to the Bar of this Court.

Plaintiff is directed to properly serve a copy of this Order on HH Valves.

So Ordered.

Dated: Brooklyn, New York
August 25, 2019

/s/ USDJ ERIC N. VITALIANO

ERIC N. VITALIANO
United States District Judge